

BEFORE THE SURFACE TRANSPORTATION BOARD

DOCKET NO. FD-34608

OHIO VALLEY RAILROAD COMPANY

PETITION TO RESTORE SWITCH CONNECTION AND OTHER RELIEF

RESPONSE OF INDIANA SOUTHWESTERN RAILWAY CO.
TO SUPPLEMENTS TO
JOINT PETITION OF
OHIO VALLEY RAILROAD COMPANY
AND
MID-AMERICA LOCOMOTIVE AND CAR REPAIR CO., INC.

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Dated: June 21, 2005.

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On or about May 16, 2005 Ohio Valley Railroad Company and Mid-America Car Repair Co., Inc. filed a “Joint Petition for Imposition of Procedures for Proper and Safe Reinstallation of Switch Connection, Prescription of Interchange Agreement and Relief from Discriminatory Switch Charges” in F.D. Number 34608.

This proceeding was originally filed by Ohio Valley Railroad Company (“OVR”), as a Petition for Expedited Relief For Service Emergencies Pursuant to 49 C.F.R. §1146 and 1147” on October 22, 2004 (under OVR’s previous operating authority finance docket number), and was decided by Board on February 23, 2005. ISW promptly complied with the Board’s decision, and the time for reconsideration or appeal expired long before the May 16 filing. There was no Petition for re-opening. Mid-America Car Repair CO., Ind. (“MACR”) was not a party to this proceeding, and is not a customer of ISW. As such, ISW treated the May 16 “Petition” as an informal complaint as to

the extent of ISW's compliance, and responded by letter on May 20, 2005, indicating that ISW's Vice President of Safety and Compliance would inspect the switch, and suggesting that any other outstanding issues might best be resolved by mediation.

On May 31, 2005, before ISW had even had an opportunity to apprise the Board of the results of its inspection, OVR and MACR filed two additional documents, a "supplement" to its Petition, and another letter repeating their unfounded charges, rejecting mediation out of hand, and requesting that "the Board consider this proceeding under its Rules of Practice."

Under the circumstances, the Board should reject OVR/MACR's filings in their entirety. They have not initiated any proceeding by filing these documents in a concluded proceeding involving the reinstallation of a switch. F.D. 34608 was not a rate proceeding. MACR is not an ISW customer, and was not a party to F.D. 34608. If safety of the switch is their real concern, they should contact the Federal Railroad Administration, instead of using this "concern" as a basis to continue to hold third party equipment hostage in order to get them to write letters to the Board to support OVR/MACR's true goal, which is below-market pricing for their occasional passenger car / locomotive repair business.

Attached as "Exhibit 1" is the Verified Statement of Tom S. Black, as to the condition of the switch in question. Attached as "Exhibit 2" is the Verified Statement of Shane Cullen as to further work that has been performed on said switch. ISW has gone the extra mile to provide a safe switch.

Given the irregularity of this proceeding, ISW is reluctant to address the other allegations of OVR/MACR. Nor should ISW be required to respond to an ever-widening litany of complaints being raised in an already-concluded proceeding. Nevertheless, ISW will state that it long-ago completed all necessary AAR paperwork to interchange with OVR, and has no objection to entering

into a formal interchange agreement with OVR. (ISW prepared a draft interchange agreement and apparently it was not transmitted to OVR, an oversight that is being herewith corrected). It should also be noted that the alleged operational issues surrounding payment of charges to ISW result from the fact that virtually all the cars moving to/from MACR are empty, and therefore are handled by CSX under Rule 11. ISW has, in the past, had difficulty collecting its charges on these cars, and hence had no alternative but to insist on payment of charges prior to interchange. These “paperwork” issues are, however, little more than a smokescreen for OVR/MACR’s real motivation, which is to turn this proceeding into a rate case.

ISW is a switch carrier. It has a standard switch tariff in place and OVR can quote that as part of its rate. ISW believes its tariff is fair and reasonable, but OVR is free to contact ISW and negotiate rates for a specific move(s). The GE storage car rate (that OVR refers to in the Petition) was negotiated by the parties as part of a contract.¹ In the past, MACR has contacted ISW and gotten such rates. OVR, however, has never requested any rates or offered any business to ISW. Such action would frustrate OVR’s attempts to portray ISW as predatory and deny OVR the ability to hold equipment hostage and harass ISW with more legal actions.

The Board should not allow OVR/MACR to abuse its process in this manner. For well over a year now MACR and/or Harwood Properties have filed court actions, created a “railroad” (OVR) to “operate” their private yard, filed a barrage of pleadings with the Board, and sent defamatory letters to Board members and various others parties (most uncopied to ISW) in a relentless effort to damage ISW’s reputation and force ISW to move MACR traffic at unrealistically low rates.²

1 Not even considering the issue of volume discounts, antique passenger cars and old locomotives being moved for repair are much more of a risk than modern freight cars being handled for storage, so to compare a rate for movement of a passenger car with GE’s car storage rate is to compare apples and oranges.

2 Their association with a terminated “former Pioneer executive” is another troubling aspect of this proceeding.

CONCLUSION

This proceeding should be terminated. ISW respectfully requests that OVR/MACR's "Petition" be denied, and that the Petitioners be directed to cease filing new proceedings as part of closed Docket Numbers.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Daniel A. LaKemper". The signature is fluid and cursive, with the first name "Daniel" and last name "LaKemper" clearly distinguishable.

Daniel A. LaKemper, Esq.
General Counsel
Indiana Southwestern Railway Co.
Peoria, Illinois 61607
Tel.: (309) 697-1400

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing instrument was served on June 21, 2005, by e-mail on:

Richard R. Wilson
Rrwilson@Atlanticbbn.Net

And

Louis E. Gitomer
Lgitomer@Dc.Bjllp.com

And by United States Mail, first class, postage fully pre-paid, on June 21, 2005 upon:

Richard R. Wilson
Vuono & Gray, LLC
2310 Grant Bldg.
Pittsburgh, PA 15219

Louis E. Gitomer
Ball Janik LLP
1455 "F" Street, N.W.
Suite 225
Washington, D.C. 20005



Daniel A. LaKemper, Esq.
General Counsel
Indiana Southwestern Railway Co.
Peoria, Illinois 61607
Tel.: (309) 697-1400

VERIFICATION

I, Guy L. Brenkman, President of Indiana Southwestern Railway Co., declare under the penalty of perjury that to the best of my knowledge the foregoing is true and correct. Further, I certify that I am qualified to file this Verified Statement. Executed this 21st day of June, 2005.

/s/ Guy L. Brenkman

EXHIBIT 1

VERIFIED STATEMENT OF TOM S. BLACK

My name is Tom S. Black, and I am the Safety and Compliance Officer of Indiana Southwestern Railway Co. ("ISW"). I have over thirty years experience in the railroad industry, including being a Supervisor of Locomotive Engineers for 15 years, serving as president and general manager of various Class III railroads, and extensive experience with Federal Railroad Administration regulations.

On Thursday, May 26, 2005, I inspected the switch between ISW and the Ohio Valley Railroad Company ("OVR") in Harwood Yard, Evansville, Indiana. While some of the conditions complained of by OVR existed, none of these conditions rendered the switch unsafe for use. The tracks involved are excepted track under FRA standards, are used solely for switching under "yard limit" rules, and thus, the switch was, in my opinion, safe to use.

Despite the fact that the switch is safe, ISW is in the process of voluntarily correcting some of the conditions complained of.

While the condition of the switch does not concern me, the condition of OVR's interchange trackage does concern me. While in Evansville I observed this trackage from a distance and it appeared to be in very poor condition. I requested permission from William Gray, President of OVR, to inspect this trackage, but Mr. Gray did not grant such permission.

Because of the apparent condition of the OVR trackage, I would not permit ISW to operate over OVR trackage without a safety inspection.

VERIFICATION

I, Tom S. Black, declare under the penalty of perjury that to the best of my knowledge the foregoing is true and correct. Further, I certify that I am qualified to file this Verified Statement. Executed this 6th day of June, 2005.

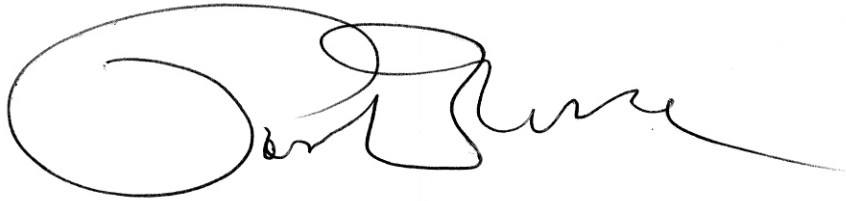
A handwritten signature in black ink, appearing to read "Tom S. Black", with a large, stylized initial "T" and a long, sweeping horizontal line extending to the right.

EXHIBIT 2

VERIFIED STATEMENT OF SHANE CULLEN

My name is Shane Cullen, and I am the Superintendent of Transportation of Indiana Southwestern Railway Co. ("ISW").

I am informed and believe that the switch leading to the trackage of Ohio Valley Railroad Company ("OVR") in Harwood Yard, Evansville, Indiana, has been upgraded to at least Class I track standards. This switch is available for use, and I have no concerns about using it, in the event that OVR desires to interchange a car with ISW.

VERIFICATION

I, Shane Cullen, declare under the penalty of perjury that to the best of my knowledge the foregoing is true and correct. Further, I certify that I am qualified to file this Verified Statement.

Executed this 21st. day of June, 2005.

Shane Cullen